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ROGER BROWN

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 ROGER BROWN,

15 Defendant.  
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Case No. 1:19-po-00016-SAB

**MOTION TO MODIFY CONDITIONS  
OF PROBATION; ORDER**

17 Mr. Roger Brown, through his attorney, Assistant Federal Defender Matthew Lemke,  
18 respectfully requests that this Court modify the conditions of his probation by temporarily  
19 suspending the condition that he participate, attend, and complete an inpatient drug treatment  
20 program until July 2020.

21 The parties stipulate as follows:

22 1. On January 16, 2020, this Court sentenced Roger Brown to a term of  
23 unsupervised probation, set to expire on January 15, 2021. ECF No. 12. As a condition of  
24 probation, the Court ordered Mr. Brown to “participate, attend, and complete an inpatient drug  
25 treatment program.” *Id.* The Court ordered Mr. Brown to begin treatment by March 30, 2020.  
26 *Id.*

27 2. COVID-19 is an illness caused by a new coronavirus that has spread throughout

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1 the world.<sup>1</sup>

2 3. Since Mr. Brown was sentenced, the coronavirus outbreak has become a global  
3 pandemic.<sup>2</sup> At the time of this filing, there have been more than 46,000 cases of COVID-19 in  
4 California alone.<sup>3</sup>

5 4. Symptoms of COVID-19 can be “severe in older individuals or those with certain  
6 medical conditions, including persons with asthma, lung disease, heart diseases, diabetes, chronic  
7 kidney disease, liver disease or those who are immunocompromised.”<sup>4 5</sup> Besides death, COVID-  
8 19 can cause serious, potentially permanent, damage to lung tissue, and can require extensive use  
9 of a ventilator.<sup>6</sup>

10 5. Currently, there is no vaccine, antiviral treatment, or cure for COVID-19.<sup>7</sup>

11 6. Both the President of the United States of America and the Governor of the State  
12 of California have declared states of emergency in response to the spread of the coronavirus  
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18 <sup>1</sup> What you should know about COVID-19 to protect yourself and others, CENTER FOR DISEASE CONTROL  
19 AND PREVENTION, <<https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>> (last  
accessed on April 29, 2020)

20 <sup>2</sup> World Health Organization Director General declares COVID-19 outbreak a pandemic, WORLD HEALTH  
21 ORGANIZATION, <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> (last accessed on April 29, 2020)

22 <sup>3</sup> California Coronavirus (COVID-19) Response, <<https://covid19.ca.gov/>> (last accessed April 29, 2020)

23 <sup>4</sup> People Who Are at Higher Risk of Severe Illness, CENTERS FOR DISEASE CONTROL AND PREVENTION,  
24 <<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>> (last accessed  
April 29, 2020).

25 <sup>5</sup> *Id.*

26 <sup>6</sup> Healy, Melissa. Coronavirus infection may cause lasting damage throughout the body, doctors fear. LA Times,  
27 (April 10, 2020) < <https://www.latimes.com/science/story/2020-04-10/coronavirus-infection-can-do-lasting-damage-to-the-heart-liver>> (last accessed on April 29, 2020)

28 <sup>7</sup> Information for Clinicians on Investigational Therapeutics for Patients with COVID-19, CENTERS FOR  
DISEASE CONTROL AND PREVENTION, <<https://www.cdc.gov/coronavirus/2019-ncov/hcp/therapeutic-options.html>> (last accessed April 29, 2020)

(COVID-19).<sup>8 9</sup> On March 19, 2020, Governor Newsom issued a “shelter-in-place” order, directing individuals to stay at home.<sup>10</sup>

7. According to the Centers for Disease Control and Prevention (“CDC”), “[l]imiting face-to-face contact with others is the best way to reduce the spread” of COVID-19.<sup>11</sup> This “social distancing” is especially important for people who are at a higher risk of getting very sick.<sup>12</sup>

8. Mr. Brown is 65-year-old man with a history of health concerns. As such, he is particularly vulnerable to COVID-19.

9. Upon information and belief, a number of local inpatient substance abuse programs have stopped admitting new patients out of concern for the public health risks posed by the spread of coronavirus.

10. Given Mr. Brown’s vulnerable state and the risks posed by group/communal living during the coronavirus pandemic, the parties stipulate and request, pursuant to 18 U.S.C. § 3563(c) and Federal Rule of Criminal Procedure 32.1(c), that the Court modify the Defendant’s conditions of probation, to suspend inpatient drug treatment program participation until July 1, 2020, at which point the parties hope that the public health risk will have subsided.

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<sup>8</sup> Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, the White House, (Mar. 13, 2020) <<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>> (last accessed April 29, 2020)

<sup>9</sup> Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19, Exec. Dep’t, State of California, (Mar. 4, 2020), <<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>> (last accessed April 29, 2020)

<sup>10</sup> Exec. Dep’t, State of California, Executive Order N-33-20 (Mar. 19, 2020) <<https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>> (last accessed on April 29, 2020)

<sup>11</sup> Social Distancing, Quarantine, and Isolation, CENTERS FOR DISEASE CONTROL AND PREVENTION, <<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>> (last accessed April 29, 2020)

<sup>12</sup> How to Protect Yourself & Others, Centers for Disease Control and Prevention, CENTERS FOR DISEASE CONTROL AND PREVENTION, <<https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>> (recommending maintaining at least six feet of distance from other persons at all times and noting that “keeping distance from others is especially important for people who are at higher risk of getting very sick”).

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Respectfully submitted,

HEATHER E. WILLIAMS  
Federal Defender

Date: April 30, 2020

/s/ Matthew Lemke  
MATTHEW LEMKE  
Assistant Federal Defender  
Attorney for Defendant  
ROGER BROWN

MCGREGOR SCOTT  
United States Attorney

Date: April 30, 2020

/s/ Jeffrey Spivak  
JEFFREY SPIVAK  
Assistant United States Attorney

**ORDER**

IT IS SO ORDERED. For the reasons set forth above, the Court GRANTS the parties' request to modify the terms of Roger Brown's probation. Mr. Brown's probation shall be modified as follows: "Mr. Brown shall commence participation in an Inpatient Drug Treatment Program by 7/01/2020 and file sworn proof of attendance to the Court and Government Officer, through Counsel."

IT IS SO ORDERED.

Dated: May 4, 2020



UNITED STATES MAGISTRATE JUDGE